

all rulings published under the provisions of this part shall be applied immediately. If the ruling involves merchandise, it will be applicable to all unliquidated entries, except that a change of practice resulting in the assessment of a higher rate of duty or increased duties shall be effective only as to merchandise entered for consumption or withdrawn from warehouse for consumption on or after the 90th day after publication of the change in the FEDERAL REGISTER.

[T.D. 75-186, 40 FR 31929, July 30, 1975, as amended by T.D. 78-394, 43 FR 49792, Oct. 25, 1978; T.D. 89-74, 54 FR 31517, July 31, 1989]

**§ 177.11 Requests for advice by field offices.**

(a) *Generally.* Advice or guidance as to the interpretation or proper application of the Customs and related laws with respect to a specific Customs transaction may be requested by Customs Service field offices from the Headquarters Office at any time, whether the transaction is prospective, current, or completed. Advice as to the proper application of the Customs and related laws to a current transaction will be sought by a Customs Service field office whenever that office is requested to do so, pursuant to paragraph (b) of this section, by an importer or other person having an interest in the transaction. Advice or guidance will be furnished by the Headquarters Office as a means of assisting Customs personnel in the orderly processing of Customs transactions under consideration by them and to insure the consistent application of the Customs and related laws in the several Customs districts. Requests for advice received by the Headquarters Office will be processed as expeditiously as possible.

(b) *Certain current transactions—*(1) *When a ruling has been issued—*(i) *Requests by field offices.* If any Customs Service office has issued a ruling letter with respect to a particular Customs transaction and the Customs Service field office having jurisdiction over that transaction believes that the ruling should be modified or revoked, the field office will forward to the Headquarters Office, pursuant to § 177.9(b)(1), a request that the ruling be reconsidered. The field office will no-

tify the importer or other person to whom the ruling letter was issued, in writing, that it has requested the Headquarters Office to reconsider the ruling.

(ii) *Requests by importers and others.* If the importer or other person to whom a ruling letter is issued disagrees with the Customs Service field office having jurisdiction over the transaction to which the ruling relates as to the proper application of the ruling to the transaction, the field office will, upon receipt of a written request submitted in accordance with the procedure set forth in paragraph (b)(3) of this section, request advice from the Headquarters Office as to the proper application of the ruling to the transaction. Such advice may not be requested for the purpose of seeking reconsideration of a ruling with which the importer or other person to whom the ruling letter was issued disagrees.

(2) *When no ruling has been issued.* Internal advice will be sought by a Customs Service field office with respect to a current transaction for which no ruling was requested or issued under the provisions of this part whenever a difference of opinion exists as to the interpretation or proper application of the Customs and related laws to the transaction, and the field office is requested to seek such advice by an importer or other person who would have been entitled, under § 177.1(c), to request a ruling with respect to the transaction, while prospective. The request must be submitted to the field office in writing and in accordance with the provisions of paragraph (b)(3) of this section.

(3) *Form of request by importers and others.* An importer or other person requesting that a Customs Service field office seek advice from the Headquarters Office must make such a request, in writing, to the field office having jurisdiction over the transaction in question. The request shall contain a complete statement setting forth a description of the transaction, the specific questions presented, the applicable law, and an argument for the conclusions advocated. The statement must also specify whether, to the knowledge of the person submitting the statement, the same transaction,

or one identical to it, has ever been considered, or is currently being considered, by any Customs Service office. In addition, the statement should indicate at which port or ports of entry identical or substantially identical merchandise has been entered.

(4) *Review of requests by importers and others.* All requests submitted by importers and other persons under paragraph (b)(3) of this section, will be reviewed by the field office to which they are submitted. In the event a difference of opinion exists as to the description of the transaction or as to the point or points at issue, the person submitting the request will be so advised in writing. If agreement cannot be reached, both the statements of the person submitting the request and the field office will be forwarded to the Headquarters Office for consideration.

(5) *Refusal by Headquarters Office to furnish advice.* The Headquarters Office may refuse to consider the questions presented to it in the form of a request for internal advice whenever (i) the Headquarters Office determines that the period of time necessary to give adequate consideration to the questions presented would result in a withholding of action with respect to the transaction, or in any other situation, that is inconsistent with the sound administration of the Customs and related laws, and (ii) the questions presented can subsequently be raised by the importer or other interested party in the form of a protest filed in accordance with the provisions of part 174 of this chapter.

(6) *Effect of advice received from the Headquarters Office.* Advice furnished by the Headquarters Office in response to a request therefor represents the official position of the Customs Service as to the application of the Customs laws to the facts of a specific transaction. If the field office believes that the advice furnished by the Headquarters Office should be reconsidered, it shall promptly request such reconsideration. Otherwise, the advice furnished by the Headquarters Office will be applied by the field office in its disposition of the Customs transaction in question.

(7) *Publication.* Within 120 days after issuing an internal advice memo-

randum, the Customs Service shall publish the decision in the Customs Bulletin or otherwise make it available for public inspection. Disclosure is governed by 31 CFR part 1 and 19 CFR part 103.

(8) *Judicial review of importers' requests.* A refusal by the Headquarters Office to consider the questions raised by an importer in the form of a request for internal advice may be appealed to the Court of International Trade if the importer demonstrates to the Court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to the importation of the merchandise.

[T.D. 75-186, 40 FR 31929, July 30, 1975, as amended by T.D. 78-394, 43 FR 49792, Oct. 25, 1978; T.D. 80-285, 45 FR 80106, Dec. 3, 1980; T.D. 84-149, 49 FR 28699, July 16, 1984; T.D. 85-90, 50 FR 21431, May 24, 1985; T.D. 89-74, 54 FR 31517, July 31, 1989]

#### **§ 177.12 Inconsistent customs decisions.**

(a) *Generally.* Certain decisions made by Customs officials at one field location which are inconsistent with decisions being made by Customs officials at another location may be brought to the attention of Customs Headquarters for resolution by a petition filed by an interested party. The types of decisions which may be the subject of such a petition, a description of the parties who qualify as interested parties, and the period of time in which the petition may be filed are set forth below.

(1) *Inconsistent decisions subject to petition.* The decisions which may be the subject of a petition include:

(i) Decisions described in section 514(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(a)), made with respect to the same, or substantially similar, merchandise; and

(ii) Repeated decisions to conduct intensified inspections or examinations of merchandise at ports of entry.

(2) *Interested Parties.* The following parties shall be considered interested parties entitled to file a petition under this section:

(i) Parties described in section 514(c)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(c)(1)), as eligible to file a protest under section 514;

(ii) A port authority; and